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Federal Communications Commission
Consumer & Governmental Affairs Bureau
Washington, D C 20554

CGB

SEP 5 2003

Control No 0302451/aw

The Honorable Kenny C. Hulshof
U S House of Representatives
33 East Broadway, Suite 280
Columbia, MO 65203

RECEIVED

SEP 11 2003

Federal Communications Commission
Consumer & Governmental Affairs Bureau

Dear Congressman Hulshof:

Thank you for your letter on behalf of your constituent, Ms. Elizabeth Mendenhall, regarding the Federal Communications Commission's (Commission) recent amendment to the rules implementing the Telephone Consumer Protection Act of 1991 (TCPA). Specifically, Ms. Mendenhall expresses concern that the Commission reversed its prior conclusion that an "established business relationship" constitutes the necessary express permission to send an unsolicited facsimile advertisement. Ms. Mendenhall indicates that requiring such express permission to be in writing will place onerous burdens on associations that wish to fax their members.

On September 18, 2002, the Commission released a Notice of Proposed Rulemaking (NPRM) in CG Docket No. 02-278, seeking comment on whether it should change its rules that restrict telemarketing calls and unsolicited fax advertisements, and if so, how. The NPRM sought comment on the option to establish a national do-not-call list, and how such action might be taken in conjunction with the national do-not-call registry rules adopted by the Federal Trade Commission (FTC) and the numerous state do-not-call lists. In addition, the Commission sought comment on the effectiveness of the TCPA's unsolicited facsimile advertisement rules, including the Commission's determination that a prior business relationship between a fax sender and recipient establishes the requisite consent to receive advertisements via fax. The Commission received over 6,000 comments from individuals, businesses, and state governments on the TCPA rules.

The record in this proceeding, along with our own enforcement experience, demonstrated that changes in the current rules are warranted, if consumers and businesses are to continue to receive the privacy protections contemplated by the TCPA. As explained in the Commission's Report and Order released on July 3, 2003, the record indicated that many consumers and businesses receive faxes they believe they have neither solicited nor given their permission to receive. Consumers emphasized that the burden of receiving hundreds of unsolicited faxes was not just limited to the cost of paper and toner, but includes the time spent reading and disposing of faxes, the time the machine is printing an advertisement and is not operational for other purposes, and the intrusiveness of faxes transmitted at inconvenient times, including in the middle of the night.

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As we explained in the Report and Order, the legislative history of the TCPA indicates that one of Congress' primary concerns was to protect the public from bearing the costs of unwanted advertising. Therefore, Congress determined that companies that wish to fax unsolicited advertisements to customers must obtain their express permission to do so before transmitting any faxes to them. The amended rules require all entities that wish to transmit advertisements to a facsimile machine to obtain permission from the recipient in writing.

The Commission's amended facsimile advertising rules were initially scheduled to go into effect on August 25, 2003. However, based on additional comments received since the adoption of the July Report and Order, the Commission, on its own motion, determined to delay the effective date of some of the amended facsimile rules, including the elimination of the established business relationship exemption, until January 1, 2005. The comments filed after the release of the Report and Order indicate that many organizations may need additional time to secure this written permission from individuals and businesses to which they fax advertisements. Enclosed is a copy of the Commission's Order on Reconsideration, released on August 18, 2003.

We appreciate your comments. We have placed a copy of your correspondence in the public record for this proceeding. Please do not hesitate to contact us if you have further questions.

Sincerely,

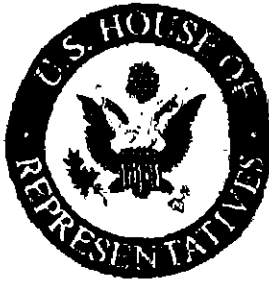
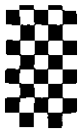


K. Dane Snowden

Chief

Consumer & Governmental Affairs Bureau

Enclosures



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Address 201 N Third Street, Suite 240, Hannibal, MO 63401

From Washington, MO
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Address: 516 Jefferson Street, Washington, MO 63090

Date: 8/18/2003

Please Deliver To: Ms Diane Atkinson

Fax Number: 202-418-2806

From: Kan Dowell

Number of Pages to Follow: 1

Notes:

Urgent—timely issue enclosed

*CCB
TCPA
2451*

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KENNY HULSHOF
12TH DISTRICT, MISSOURI

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August 15, 2003

Ms Diane Atkinson
Congressional Liaison Specialist
Federal Communications Commission
445 12th St SW
Room 8-C453
Washington, D C 20554

RE Ms Elizabeth Mendenhall
33 East Broadway, Suite 200
Columbia, MO 65203

Dear Ms. Atkinson

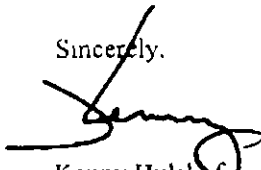
I am writing on behalf of my constituent, Ms Elizabeth Mendenhall, regarding the regulation of unsolicited faxes

Ms Mendenhall is the president of the Columbia Board of Realtors, and she has expressed several concerns regarding the FCC regulations that are to take effect on August 25, 2003. Ms. Mendenhall believes that since the "established business relationship" exception to the Telephone Consumer Protection Act will be removed, the Board of Realtors and other professional associations will experience significant hardships as they conduct business with current and prospective members. In addition, Ms. Mendenhall is concerned that Realtors may open themselves to undue liability as they contact their clients via fax numbers at the clients' workplaces, hotels, or other locations away from home.

At this time, Ms. Mendenhall requests clarification of the new requirements regarding faxed communications, including the definition of "unsolicited advertisements." As there are a number of complications that have arisen due to the new rules, Ms. Mendenhall would appreciate an extension of the August 25 effective date. Please direct your response to my Columbia district office.

If you have any questions or concerns, you can contact Ms. Kari Dowell at (573) 449-5111. I am grateful for any assistance you may be able to provide in this matter.

Sincerely,


Kenny Hulshof
Member of Congress

KH kld

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